

# Democratización



Year 3, Issue 16

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# Regional Elections and the advancement of the Communal State

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On November 21 of this year, 2021, regional elections were held in Venezuela. These elections were organized by a government that has lost its legitimacy<sup>1</sup> and, moreover, by a National Electoral Council controlled by the group that today usurps power in the country and that, despite the incorporation of new rectors, has been unable to modify most of the conditions<sup>2</sup> that should ensure the transparency of an election.

Furthermore, since these elections are regional, state governors and deputies to the legislative councils were to be elected, as well as mayors and councilors to the municipal councils. Therefore, any modification to state and/or municipal

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1 Statute that governs the transition to democracy to restore the validity of the Constitution of the Bolivarian Republic of Venezuela. Articles 8 and 9.

2 - There is still no audit of the Permanent Electoral Registry.  
- There is still no international observation of the whole process.  
- The cards of various political parties remain hijacked or disabled.  
- Several politicians have been disabled, imprisoned or remain in exile.  
- Regional directorates and subordinate electoral bodies are in the hands of the PSUV, the ruling party.  
- The government controls the media.  
- There is no audit of the inspection process.  
- In general, all State institutions, the Judicial System and the Armed Forces act at least partially in order to benefit the results that benefit the ruling party.

powers and budgets, as well as any alteration to the political territorial order of the Republic, is key. Whether leaders and institutions have resources and tools or not will define their impact over problem-solving in each region and the possibilities of influencing the advancement of political change in Venezuela. In any case, the starting point is quite irregular, since most of the decentralization has already been dismantled and, in the days after the November 21 election, the State of Zulia was stripped of its powers to administer tolls and airports.

Therefore, the appearance in the 2021 legislative agenda of the *de facto* National Assembly of a series of laws referring to the Communal State<sup>3</sup>, and in general to the political territorial order of the country, once again highlights the systematic dismantling of the decentralized Federal State. It is important to reflect on its consequences on the future of municipal and state governments after these elections.

This article is divided into four parts. (a) First, the decentralization experience that began in 1989 and continued during the 1990s will be briefly summarized. (b) Then, the process of recentralization and imposition of the communal model since 1999 will be described. (c) The laws that have been working in the *de facto* National Assembly during 2021 will be analyzed. (d) Finally, some elements to bear in mind in the following months will be specified in order to understand the extent to which

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3 Some of the first mentions of the so-called Communal State are found in the transcript of an event directed by Hugo Chávez: High Level Workshop: The New Strategic Map (November, 2004). Then, in 2005 it began to appear in various documents of the government and the governing party until in 2006 and 2007 it appeared as a central element of the definitive turn towards socialism that then-president Hugo Chávez started promoting at that time.

the Communal State is advancing and to be able to respond accordingly.

### **The 1989-1999 decentralization**

One of the clearest demands around which the Commission for the State Reform (COPRE, for its Spanish acronym) worked was the need to transfer more power to each region in a country that had historically been centralist<sup>4</sup>. Thus, in 1989 and thanks to the work of this commission, the *Law for the Election and Removal of State Governors* was approved, which for the first time allowed the direct election of mayors and governors. Since then and until 1993, several important milestones occurred that allowed to rapidly deepen decentralization. Among them, I must mention:

- The Organic Law of Decentralization, 1989;
- Organic Law of Decentralization, Delimitation, and Transfer of Competences of the Public Power, 1989;
- Partial Regulation number 1 of the LOD, 1993;
- The eight additional partial regulations of 1993;
- In 1993, the Intergovernmental Development Fund (FIDES) was created, which would be financed with part of the resources collected by the Value Added Tax (IVA).

These laws allowed the decentralization phenomenon to speedily advance in recent years, allowing progress, at least, in the following three aspects:

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<sup>4</sup> Article 2 of the 1961 Constitution stated that the Republic of Venezuela is a Federal State, in the terms established by this Constitution. However, the rest of the body of that constitution described it as a centralist state.

1. Public spending was democratized. By 1998, almost 30% of the national budget was executed in states and municipalities and a minimum of 20% had to be thus invested.
2. The solution of the problems was brought closer to the people and to the place where those problems occurred through a complex but enriching process in which states and municipalities assumed many of the powers of the national government. The regulations of the LOD came to detail the specific administrative aspects that actually made the idea of decentralization possible. With these tools, models such as health in Carabobo state and education in Mérida are born. Governments were given the opportunity to manage ports, airports and tolls, generating not only the necessary resources for the maintenance of roads and highways, but also enormous resources for the development of the states, such as the Rafael Urdaneta Bridge in Zulia.
3. The country's political universe was enriched as new leaders emerged from the different regions to compete strongly in the national political debate, in a stage that until then had been almost entirely reserved for those who made politics in the capital. Thus, we see how mayors and governors start a healthy competition to better manage, to innovate and to absorb new and complex competences with unusual eagerness. Among them, we could mention Oswaldo Álvarez Paz, Andrés Velázquez and Henrique Salas Römer, who entered the national political scene and shortly after were running in the presidential elections of 1993 and 1998.

It is important to consider these three aspects, and other practical details of decentralization, to weigh the effects of the destruction of this model and the dimension of the challenges ahead<sup>5</sup>.

### **The process of recentralization since 1999**

Although the decentralization process in question began in 1989, the legislator partially constitutionalized some aspects that had been developed in the *Organic Law of Decentralization*,

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<sup>5</sup> We start from the assumption that decentralization can offer advantages for the countries that implement it as an ordering principle. It is convenient to review the literature in this regard. Some references are listed here:

Arikan, Gulsun. *Fiscal Decentralization: a remedy for corruption?* Urbana-Champaign: Department of Economics, University of Illinois. 2004

Arze, Javier; Martínez-Vázquez, Jorge & McNab, Robert. *Fiscal Decentralization and the Functional Composition of Public Expenditures*. Georgia State University. 2005.

Besley, Timothy & Coate, Stephen. Centralized versus Decentralized Provision of Local Public Goods: a political economy approach. *Journal of Public Economics*. 2003.

Dib, Farah. Fiscal Decentralization and Government Size: reconciling Competing Views with a Special Emphasis on Poland. *Journal of Development and Social Transformation*. 2007.

Gatti, Roberta. *Decentralization and Corruption: Cross-Country and Cross-State Evidence*. World Bank. 1999.

Fan, Simon & Lin, Chen. *Political Decentralization and Corruption: Evidence from around the World*.

Mascareño, Carlos. *Descentralización y democracia en América Latina: ¿Una relación directa?* University of Maryland. 2008.

Manor, J. *The Political Economy of Democratic Decentralization*. Washington DC. World Bank 1999

Martinez. Vazquez, Jorge. *The Impact of Fiscal Decentralization. Issues in Theory and Challenges in Practice*. Asian Development Bank. 2011

Martínez-Vázquez, Jorge & McNab, Robert. *Fiscal Decentralization, Macroeconomic Stability, and Economic Growth*. 2002

Sow, Moussé & Razafimahefa, Ivohasina. *Fiscal Decentralization and the Efficiency of Public Service Delivery*. International Monetary Fund. 2015.

*Delimitation and Transfer of Competences of Public Power* approved in 1989<sup>6</sup> in the 1999 Constitution. Though this could be considered an advance, immediately after the approval of this Constitution a process of State recentralization begins, which has been maintained for more than 20 years and among whose results we can mention:

- The resources of states and municipalities have been decreasing since 1999. In 1999, 30% of the national budget went to the regions<sup>7</sup> with a minimum set at 23%. Today the regions manage less than 5%<sup>8</sup>, with only a fixed maximum of the budget that can be allocated to the regions.
- As oil income began to increase, a practice was introduced that consisted of underestimating the price of the oil barrel when setting the budget and therefore the constitutional situation. Complementarily, all surplus was destined to funds<sup>9</sup> that were executed with absolute discretion by the National Executive to the detriment of the regions.
- The Federal Council of Government was turned into an instance at the service of the interests of the national executive<sup>10</sup>.

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6 Allan Brewer-Carías. *El "Estado Federal Descentralizado" y la centralización de la federación en Venezuela. International Seminar on Federalism and Regionalism*. UNAM, Mexico. 2003.

7 Carlos Mascareño. *La Asfixia Financiera de la Descentralización venezolana*. 2020 [www.dialogopolitico.org](http://www.dialogopolitico.org)

8 In the absence of official numbers and a national budget, it is impossible to accurately estimate the exact percentage. There is only data on the constitutional situation.

9 Carlos Mascareño. *La Asfixia Financiera de la Descentralización venezolana*. 2020 [www.dialogopolitico.org](http://www.dialogopolitico.org)

10 "El CFG, previsto en el Artículo 185, apenas se instrumentó 11 años después (2010) y siempre ha funcionado como un ente dependiente de los

- The Interterritorial Compensation Fund and the Constitutional Site have also been managed by the national executive<sup>11</sup>.
- Services, highways, ports, airports and water systems were recentralized, and the possibility of establishing public/private alliances and concessions to improve services in the regions was eliminated.
- In 2006, the Law of Communal Councils was approved and the Chávez government stopped recognizing other instances as mechanisms for legitimate participation and organization.
- In 2007, the Government's proposal to reform the Constitution in order to eliminate the Decentralized Federal State by the so-called New Geometry of Power was defeated by means of a referendum<sup>12</sup>.

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designios del presidente". Carlos Mascareño. *El Autoritarismo Venezolano y la Destrucción del Federalismo en Venezuela*. [www.dialogopolitico.org](http://www.dialogopolitico.org) 2019.

11 Transparencia Venezuela. Presupuesto Venezuela 2017. 2017.

12 According to Allan Brewer Carías, this project intended to carry out a radical transformation of the State and sought to lay the foundations to transform it into a centralized State, with concentrated power under the illusion of Popular Power, which implied the definitive elimination federally, making political participation impossible and degrading representative democracy. All this, through the supposed organization of the population in the Councils of People's Power, such as the communal ones, which are institutions without any political autonomy, whose members were intended to declare in the Constitution itself that they were not elected. These councils, created in 2006, are controlled from the Headquarters of the government and for whose operation, the precise instrument is the single party. (*The Constitutional Reform in Venezuela of 2007 and its Rejection by the Original Constituent Power*. Institute of Legal Research of the UNAM).

- Mayors and governorships, through various schemes, were deprived of their powers; many municipal police stations were intervened<sup>13</sup>.
- Many mayors, governors, regional deputies and councilors have been persecuted, imprisoned and exiled.
- The figure of the protectors of states and municipalities was created<sup>14</sup>.
- In December 2010, the “package of laws of the People’s Power” was approved:
  - Organic Law of People’s Power
  - Organic Law of Social Comptroller
  - Organic Law of the Communes
  - Organic Law of the Communal Economic System
  - Organic Law of Popular Public Planning

### **2021: a new advance of the Communal State**

As we have been able to verify, these 20 years of the Chavista government have almost meant the complete dismantling of the Decentralized Federal State. However, an effort has been observed to reorganize and strengthen the institutions that revolve around

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13 By 2017, 22 state and municipal police stations had been intervened. After the 2017 gubernatorial elections, the three police stations of the states in which the opposition had won had been intervened.

14 The first antecedents were the creation in 2009 of the Government of the Capital District by Jaqueline Fariás and then in December 2012 the figure of the State Protector entrusted to Elías Jaua, after the victory of Henrique Capriles in the elections of December of that year.

the idea of the Communal State with the call for the election of authorities of the communal councils at the end of 2020. Thus, since very early this year (2021) there have been several events that suggest that the ruling party seeks to revitalize the idea of the Communal State and the political organization that is built on it for the socialist political project.

At the beginning of the year 2021, a legislative agenda was proposed for the National Assembly imposed by the Nicolás Maduro regime on December 6, 2020<sup>15</sup>. This agenda includes the following laws, all of them referring to the territorial political ordering and administration of the Republic:

- Draft Organic Law of the National Communal Parliament;
- Draft Organic Law of Communal Cities;
- Draft Law of the Federal Council of Government;
- Draft Law on Regional and Municipal Comptrollerships;
- Draft Organic Law of Special Economic Zones;
- Draft Organic Law on Territorial Planning.

Likewise, it will be necessary to observe in the months to come the approval or not and the impact of the following laws:

- Draft Organic Law of Smart, Sustainable and Resilient Cities for Venezuela<sup>16,17</sup>;

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<sup>15</sup> Date on which Nicolás Maduro, on radio and television network, for the first time reported the idea of passing a communal cities law to reinforce the creation of more than 200 cities of this type throughout the country.

<sup>16</sup> [www.asambleanacional.gob.ve/leyes/proyecto](http://www.asambleanacional.gob.ve/leyes/proyecto)

<sup>17</sup> Some examples of the articles of this bill that call attention are:

- Regarding urban planning and the National and Popular Planning

- Draft Law for the Reform of the Decree with Rank, Value and Force of Organic Law of Borders;
- Draft Organic Law on the Right to the City;
- Draft Organic Law of the Special Regime for Socioeconomic and Productive Development of the Bolivarian State of Nueva Esparta;

Additionally and in chronological order the following events took place:

- On January 11, the minister of the regime, Noris Herrera, claimed to have received more than 400 proposals from the “common people” to create laws for the communal cities and the Communal Parliament.
- That same day the Episcopal Conference in its pastoral exhortation stated that we suffer the mistakes of a

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System. Art. 13: Urban Planning is integrated within the National and Popular Planning System and the integral principles of the systemic vision, unity within the diversity and category of totality indicated in Plan Patria. It will maintain an organic vision within the national spatial taxonomy, considering the elements that contain it internally, such as the communities, communes, urban corridors, as well as those that form a functional part in the subregions and regions within the integral vision of the nation.

- Art. 14: The forms of organization of the population and the popular power will be addressed, in accordance with the guiding principles of the Constitutional Law of Plan Patria, making binding decisions in the different scales. In accordance with the Law that regulates the National and Popular Planning System, the specific forms will be assumed in the urban scale for plans, decisions, resources, competences, projects, management and monitoring, according to the spatial forms of aggregation and the system of respective actors, as well as the political organizational forms of the People’s Power and the communal city.

misnamed Homeland Plan that intends to impose laws to create a Communal State.

- On January 23, Nicolás Maduro announced that he was waiting for the National Assembly to approve the Law of the Communal Parliament to elect some 4,000 or 5,000 deputies.
- On January 25, Nicolás Maduro stated that the PSUV was to assume the rectory of the Revolutionary Government.
- On January 28, the Internal Regulations and Debates were modified, creating the Permanent Commission for the Development of the Communes.
- On February 11, the Congress of Communes 2.0 was held and that same day Nicolás Maduro delivered the Law of the Communal State and the Law of the Communal Parliament to Jorge Rodríguez in the National Assembly.
- Exactly one month later, on March 11, the Law of Communal Cities was approved in the National Assembly in the first discussion.

The laws passed in the first discussion, and what is known about laws such as Special Economic Zones, are generally unconstitutional:

- They are in direct contradiction with Article 136 of the Constitution regarding the distribution of public power, and they seek to empty municipalities and states of functionality, opening the possibility of approving or not budgets and of reassigning powers to the instances of the Communal State.

- This assignment of competences to the communal instances threatens the possibility of real execution of any concrete public policy. That is, by replacing the Municipality, the communal cities start to administer issues such as security, infrastructure, public services, which are Municipality<sup>18</sup> competences, but which also require a specialized, professional and well-paid bureaucracy, as well as equipment, machinery and other resources necessary to provide these services. The idea of a certain self-provision of services is one of the unfeasible aspects on which the idea of the Communal State is built.
- This, in itself, constitutes the limit to the regime's vaunted possibility of self-government and the leading government<sup>19</sup>.
- In general, all these instances that by aggregation are forming the Communal State seem to indicate that it would seek to impose an assembly regime<sup>20</sup> designed so that the leader of the so-called Revolution accumulates more power, and to eliminate all intermediate institutions and organizations and the real participation mechanisms, while strengthening social control mechanisms.

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18 Art. 17 of the project of the Organic Law of Communal Cities.

19 Allan Brewer-Carías, when referring to the Communal Cities Bill, affirms that the absence of mechanisms of election through universal, direct and secret suffrage of the communal city's organs spokespersons, obeys the same reason, ultimately seeking, in the name of a supposed "participatory and protagonist democracy," to put representative democracy at the local level at an end in Venezuela, as well as to any vestige of territorial political autonomy that is the essence of political decentralization and of participation (Brewer-Carías, Allan. *Comments on the Unconstitutional Project for the "Law of Communal Cities" or One More Step in the Deconstitutionalization of the State, Through its Demunicipalisation*).

20 As the one proposed for example in Omar Ghadafi's Green Book.

- They eliminate the right to universal, direct and secret vote, since voting is performed by show of hands.
- The Communal Parliament and its legislative powers, by aggregation, create four additional parliaments that finally make up the so-called Communal National Parliament, which is nothing more than a parallel parliament to the National Assembly provided for in the Constitution.
- They assign discretionary spaces of the National Territory.

### **What to watch out for after November 21, 2021?**

Having verified the process of gradual dismantling of the Decentralized Federal State and in the face of this new advance proposed throughout 2021, it is prudent to point that any strategy of the Venezuelan opposition in the midst of a regional election and facing the possibility of governing in States and Municipalities should account for the possible consequences of the advancement of the Communal State. It remains to be seen whether those elections, which did not meet minimum electoral and political conditions, will help empower opposition leaders to occupy positions of power that facilitate a national change of the country. However, that leadership could be lost if the election does not really translate into an effective exercise of that power. This is a very concrete possibility, despite it being camouflaged, with the remodeling of the Communal State.

Regions and municipalities have a life of their own and, beyond the constraints that national dynamics necessarily impose, it always seems opportune to fight to improve government in the instances closest to the people. But, precisely because this is important, the powers and resources that are ultimately

available to exercise these sub-national governments cannot be underestimated.

Therefore, this text proposes to follow up on the next topics to observe the progress or retrogression of the Decentralized Federal State in the months after the election:

**Budget:** according to data from Professor Carlos Mascareño, and in the absence of official data on the national budget and its execution, the ratio between national and regional has been continuously decreasing from above 20% in 2009 to about 8% in 2018. The collapse of oil income, the fall in the country's GDP, the rebound in the Venezuelan diaspora, and the complex humanitarian emergency lead us to think this trend continued even until now. In the country, more than 65% of the municipalities cannot sustain themselves with their own production. Monitoring this proportion in the midst of official opacity is a priority. It is most likely the key variable. Electoral efforts will be of little use if as long as we lack the necessary resources to exercise political power.

**Competences and legal aspects:** The laws that are moving forward now in the de facto National Assembly provide, at least in the circulated versions, the transfer of power of governorships and mayors to the instances of the so-called People's Power. So, for example:

1. *Draft Organic Law of the National Communal Parliament:*

The so-called Communal State *Aggregation System* offers competences that would empty the capacities of the legislative bodies provided for in the Constitution and would enter into open competition with them, generating chaos in the assignment of responsibilities, budgets and competences and in the monitoring

that the comptrollers' offices could carry out regarding the execution of public spending, etc.

- The Communal Parliament abrogates powers that are broader than those that correspond to the legislative and municipal councils and even to the National Assembly.
- It provides that the National Communal Parliament may or may not approve the national budget and in some of the revised versions it would have powers in the security and defense policy of the Republic.

*2. Draft Organic Law of Communal Cities:*

We will need to observe mainly the extent to which the instances of the Communal Power absorb or not the powers of governors and mayors and whether they do so selectively in the states or municipalities governed by the opposition. The possibility of contracting, executing works, implementing programs, generating employment and ensuring citizen security -i.e. to carry out the competencies described in the Constitution- will be closely related to the probability that these subnational governments may contribute in improving citizens' quality of life and in achieving political change. Some items to keep in mind:

- Art. 1<sup>21</sup>: State of Justice, federal and decentralized vs. the Communal, Socialist and Bolivarian State.
- Art. 2: Scope of action in the executive, legislative, judicial, electoral, moral power and in the exercise of its sovereignty that may act in the political, economic, social, cultural, environmental and international spheres.

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<sup>21</sup> Draft Organic Law of Communal Cities

- Art. 3: Contributes to the process of re-founding the Bolivarian Republic of Venezuela as a cause that has the purpose of building a new institutionality based on this Law, where a new territorial political organization will emanate, a new system of administration and government that will result in a new social contract and the organs of a new state at the local level.

While these pages are being written, on November 23 and according to Official Gazette number 42,261, the government of Zulia state, won by Manuel Rosales, was stripped of its powers to administer tolls (including that of the Rafael Urdaneta Bridge) and airports (including La Chinita). Similarly, the next day, according to Official Gazette 42,262, in Cojedes state the governmental powers to administer the Ezequiel Zamora Airport had also been withdrawn<sup>22</sup>.

Furthermore, on December 2, Nicolás Maduro affirmed in an event in the state of Miranda that institutional power is to be handed over to the communes and communal councils, announcing their decentralization in order to be granted to the people for its direction and management.

These constitute serious antecedents for decentralization in the country, an illustration of the recentralizing trend of Nicolás Maduro's regime, and shows that it was necessary to fight for electoral as well as political conditions that make sub-local government possible.

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<sup>22</sup> Servicio Autónomo Imprenta Nacional and Gaceta Oficial. <http://spgo.in.imprentanacional.gob.ve/>

### 3. *Draft Organic Law of Special Economic Zones:*

It is of concern, among other things, that state legislative councils, municipal councils and citizens of areas subject to special economic zone status are not involved in decision-making regarding their creation.

- Art. 7: The creation of Special Economic Zones is an exclusive power of the President of the Republic, who will establish them by Decree.

Moreover, it will be necessary to observe the possible interventions to municipal or state police in the spaces governed by the opposition. In this same sense, it would be advisable to monitor the impact that the *Reform Law of the Decree with Rank, Value and Force of Law of the Statute of the Police Function* may have on the regional police, as well as the eventual approval of the *Organic Law Project of Quadrants of Peace*.

**Protectors and political persecution:** although in the months prior to the November 21 election Nicolás Maduro affirmed that the figure of state protectors would be eliminated., different regional interests and different factions of the dominant coalition could reverse this at any time.

The persecution of mayors, governors, deputies, councilors and other officials of the sub-local governments will have to be monitored. In the hours in which these lines are written, after November 21, 2021, there are already some elected councilors and mayors who have been harassed or persecuted<sup>23</sup>. These events

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<sup>23</sup> The elected mayor of the Arzobispo Chacón Municipality, Mérida, Omar Fernández was arrested on November 26 along with 3 members of the Liaison Commission. On November 26, 2021, the rector of the National Electoral Council Roberto Picón rejected the persecution, harassment and arbitrary detention of “some” mayors and councilors. <https://www.>

boosts any sense that the bet around participation might have had.

Everything indicated up to here considers the effects of the advance or retreat of the decentralized federal State. But there is a new variable used by the Nicolás Maduro regime to control the political evolution of the country, which is the promotion of pseudo-opposition groups that seek to divide the opposition vote. This, together with the dismantling of the decentralized federal state, makes it even more difficult for the country's political universe to enrich itself with regional leaders, as happened in the 1990s.

Keeping reconstruction in mind, the flag must be the decentralized federal state and the absolute dismantling of the so-called Communal State and all its instances. We must rethink the Federal Council of Government, so that it is really at the command of decentralization; of the multiplication of the magnitude of the funds earmarked for interterritorial compensation; the reestablishment of a minimum and not a maximum of national budget to be invested in the regions; the promotion of the State Public Finance Law; the advancement towards schemes that allow larger portions of tax revenue to remain in the regions; progress in municipal oil taxation; the construction of mechanisms so that states and municipalities can efficiently request and assume more powers in services, roads, transportation and communications; the exploration of the possibility of decentralizing the justice system; the provision of greater depth to the powers of the legislative councils; the recuperation of parochial boards to attend sub-local problems in each municipality; the recognition of neighborhood associations and other forms of neighborhood organization;

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[elnacional.com/venezuela/roberto-picon-rechazo-la-persecucion-y-detencion-arbitraria-de-alcaldes-y-concejales-electos-el-21n/](http://elnacional.com/venezuela/roberto-picon-rechazo-la-persecucion-y-detencion-arbitraria-de-alcaldes-y-concejales-electos-el-21n/)

the creation of the possibility of public-private partnerships to improve citizens experience, among many other policies that can help rebuild decentralization and improve the quality of life throughout the territory<sup>24</sup>.

In future Venezuela, recomposing the idea and functionality of the decentralized Federal State can become one of the elements that speeds the reconstruction of the State apparatus and improves the quality of life of Venezuelans more quickly.

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<sup>24</sup> Márquez, Trino. *La Descentralización en la Reconstrucción de la Democracia*. CEDICE. 2016

## Authors

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### Pedro Méndez Dager

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